

Dear Senator Smith and members of the Judicial Proceedings Committee,

I am a resident of **MD District 46**. In the wake of videos of drug and weapon planting captured by body cameras, the Gun Trace Task Force scandal, the DOJ investigation resulting in the consent decree, and the details of police reports contradicting the video evidence in cases like George Floyd's and Tyre Nichols, as well as after personal experiences of police dishonesty during traffic stops, I do not trust the Baltimore Police. I do not trust them to be telling the truth and not simply taking advantage of a loophole in probable cause when documenting the "smell of cannabis", either when walking or driving or in any other circumstances in a world where cannabis smell could be anywhere for many reasons. For those reasons, **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**

Many police encounters begin with what courts call "reasonable suspicion": a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it's a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won't: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can't legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia's legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

**John Ford**  
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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.